ADDENDUM TO SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

Memo to : Hon. Herman Walz, Lawrence Kasperek, Esq.
David Moss, Esq., Howard Relin, Esq.

From : Mary Lou Schloss

Re : Comments on Added Memorandum of Law by Lawrence Kasperek, Daniel DeLaus, and David Moss in Topfree Seven Case

This addendum to my memorandum dated October 6, 1986, is prompted by my desire to comment on passages in the Added Memorandum of Law by Lawrence Kasperek, Daniel Delaus, and David Moss also dated October 6, 1986. I did not have an opportunity to see the Added Memorandum prior to its submission.

With the exception of the passages referred to here, I am fully supportive of the Added Memorandum. It is very well written. I wish to join wholeheartedly in its contentions regarding the unconstitutionality of Section 245.01 of the Penal Law of the State of New York.

It is suggested on page 28 of the Added Memorandum that:

"The state's interest in protecting children from images that the legislature considers unsuitable could be served equally well [as in Section 245.01] by designating certain parks and beaches as clothing-optional recreation areas and placing such areas off limits to persons below the age of majority. Children would thereby be protected from allegedly harmful exposure to nudity, while the defendents and others similarly situated would have access to public lands."

This suggestion would not satisfy my (and I believe my codefendents) objection to the law for several reasons:

1) While it might protect the rights of adult women, it would still deny the right to be topfree to younger females.

2) It would have the effect of labeling women's breasts as

"adults only" objects. Women's breasts would still be seen as shameful and the tops covering them as badges of inequality. This objectification would still reinforce relationships of inequality between women and men.

3) As demonstrated in several contexts in my briefs of August 12, 1986, and October 6, 1986, and in the trial, women's body self-concepts and health are related to the realization that their breasts are normal and acceptable. This realization would be achieved far more often if people from a young age became familiar with the wide variety of women's breasts in natural, nonsexual settings. Creating "adults only" topfree areas would defeat this objective.

4) Such areas, with family use forbidden, might tend to be used for adult sexual activity - reinforcing the image of women's breasts as sex objects.

5) I am unaware of any legislative intent to label the sight of women's breasts as unsuitable for children.

6) No evidence has been presented to indicate that exposure of children to women's breasts is in any way unhealthy. On the contrary, my briefs have shown that famiarity with women"s breasts is beneficial to children. (i.e. feelings of equality, positive body self-concept, better health, reduced teen pregnancy.)

7) In my experience, children are not upset when exposed to women's breasts. Children accept the entire human body as natural unless taught by adults that parts of it are nasty and must be hidden.

8) Labeling women's breasts as for "adults only" would increase

women's reluctance to breastfeed in public.

A second suggestion, made on page 26 of the Added Memorandum, although not as objectionable as the first, is that a way to keep the sight of female breasts from members of society who might be offended without prohibiting such nudity in all public places at all times would be "the establishment of separate clothing-optional parks and beaches." However, restricting women, but not men, to a specific area to be topfree retains much of the stigma and many of the unfortunate effects of a full prohibition of topfree recreation.

It might be fairer to create separate tops-required parks and beaches. It would be more proper to segregate those who have objections to women's breasts rather than to limit the freedom of the rest of the people. To meet the standards of equal protection of the law, in such tops-required areas men as well as women should be required to conceal their breasts. The creation of tops-required areas would better satisfy "the third prong of the O'Brien test, which requires that any incidental restriction of First Amendment freedoms be no greater than is essential to furtherance of the government interest."

Of course, it is my contention that topfree women are well within the range of acceptable community standards. This contention is supported by evidence presented in my previous memoranda and at the trial. There is no important government interest which justifies separation of tops-required and topfree recreation areas.

I am enclosing with this memorandum two late responses to

the survey included as Appendix B in my Supplemental Memorandum. Of particular note is the information on Empire Lake, a beautiful lake and camping area maintained by the State University of New York at Binghamton, at which the majority of women swim and sun topfree.

Judging from the full survey results, on a hot summer weekend up to two thousand women enjoy the beaches and parks of New York State topfree. Community standards can not be used to justify the unequal treatment of women in Section 245.01.

I hope that you are willing to consider this Addendum. I believe that it is important to clarify my views concerning the passages cited from what I consider to be the otherwise excellent Added Memorandum of Law submitted by the attorneys.

10/14/86